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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CANA FOUNDATION, a non-profit
corporation, LAURA LEIGH, individually,
and WILD HORSE EDUCATION, a non-
profit corporation,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT, and JON RABY, Nevada
State Director of the Bureau of Land
Management,

Defendants.

CASE NO. 2:22-cv-01200

**PLAINTIFFS' REQUEST FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Complaint Filed: July 26, 2022
Hearing:

Plaintiffs’ motion is based upon the following Declaration of Danielle Holt, Esq. and Memorandum of Points and Authorities; the Declaration of Laura Leigh attached hereto as Exhibit “1;” the Declaration of Laurie Ford attached hereto as Exhibit “2;” as well as any oral argument the court may entertain, and any other papers and pleadings in this action. *See* ECF No. 1, Plaintiffs’ Complaint for Injunctive and Declaratory Relief (“Complaint”).

[illegible]

1. I am a resident of the state of Nevada and a licensed attorney. I represent Plaintiffs in this matter.

3. In response, the attorney who will be representing the United States Department

1 of Interior in this matter, Michelle M. Spatz from the Department of Justice, emailed attorneys
2 for Plaintiffs, including myself.

3 4. Department of Justice followed up with another email on the evening of August 2,
4 2022, indicating that Defendants are not willing to provide Plaintiffs access to view the gather of
5 wild horses at Blue Wing Complex.

6 5. On August 3, 2022, Ms. Monson replied to the Department of Justice notifying
7 them that Plaintiffs' First Amendment rights are still being violated and that Plaintiffs would be
8 filing this request today.

9 6. Plaintiffs are requesting a temporary restraining order in this matter, even if the
10 U.S. Government is not able to attend the hearing, because the gather of wild horses and burros
11 described in the Complaint and this request for temporary restraining order is ongoing.

12 7. Also more fully described in the motion, Plaintiffs are suffering injury as a result
13 of the BLM's failure to comply with the First Amendment to the U.S. Constitution.

14 8. Plaintiffs and their members and supporters are distraught at the irreversible
15 violation of their First Amendment rights to observe the government's gather of wild horses and
16 burros before their permanent removal from the public lands to private facilities.

17 9. I bring this motion in good faith, for good cause, and not for purposes of undue
18 delay or harassment.

19 10. I declare under penalty of perjury the foregoing to be true to the best of my
20 knowledge and recollection.

21 Further this Declarant Sayeth Naught.

22 DATED this 3rd day of August, 2022.

23 /s/ Danielle Holt

24 Danielle Holt

1 **Memorandum of Points and Authorities**

2 **A. Introduction**

3 The BLM is intentionally denying Plaintiffs unobstructed access to BLM's activities on
4 public lands in Nevada in violation of the First Amendment to the U.S. Constitution. The BLM's
5 gather of wild horses and burros at the Blue Wing Complex began on August 1, 2022 and is
6 ongoing. The BLM plans to gather and remove approximately 200 wild horses and 800 wild
7 burros. The BLM reports that as of August 2nd, 304 animals have been gathered, 108 animals
8 have been permanently shipped off the range to private facilities, and 4 animals have died.
9 However, members of the public are being intentionally denied unobstructed access to BLM's
10 trap sites, BLM's handling of the animals, and BLM's temporary holding corrals. *See* Exhibit 2,
11 Declaration of Laurie Ford. When removing gathered animals from a range, the BLM ships the
12 wild horses and burros from the temporary holding corrals to private short-term holding facilities
13 that are off-limits to the public. Plaintiffs have been irreversibly denied their right to view the
14 trapping, handling, condition, and identity of the animals gathered and shipped thus far. Plaintiffs
15 respectfully request a temporary restraining order (TRO) and preliminary injunction preventing
16 Defendants from gathering and removing any additional wild horses and burros from the Blue
17 Wing Complex until Defendants give Plaintiffs unobstructed access to the BLM's activities,
18 including the temporary holding corrals, as required by the First Amendment to the U.S.
19 Constitution.
20

21 **B. Statement of Material Facts**

22 **1. The Blue Wing Complex**

23 The Blue Wing Complex is located in the Winnemucca District of Nevada and consists of
24 2,283,300 acres of land. The Blue Wing Complex is made up of five Herd Management Areas
25 (HMAs), four Herd Areas (HAs), and other non-HMA areas. The HMAs are: Kamma
26

1 Mountains, Seven Troughs Range, Lava Beds, Blue Wing Mountains, and Shawave. The HAs
2 are: Antelope Range, Selenite Range, Trinity Range, and Truckee Range.

3 On July 26, 2022, the BLM publicly announced that a wild horse and burro gather would
4 begin on August 1, 2022 on the Blue Wing Complex.¹ The gather is ongoing and BLM plans to
5 gather and remove a total of approximately 200 wild horses and 800 wild burros. *Id.* As of the
6 filing of this request, the BLM reported that on the first day of the gather, August 1st, 174 wild
7 burros were gathered from the Blue Wing Complex.² On the second day of the gather, August
8 2nd, 130 wild burros were gathered and 108 wild burros were shipped to off-site private holding
9 facilities. *Id.* Of the 304 burros gathered, 118 are male wild burros (“jacks”), 162 are female wild
10 burros (“jennies”), and 24 are wild burros under the age of one year old (“foals”). *Id.* All 24 of
11 the foals were shipped away to private holding facilities on August 2nd, along with 84 jennies.
12 *Id.* On the first day of operations, one 17-year-old jenny died from a broken neck during the
13 gather. *Id.* On the second day, one 13-year-old jenny, one 9-year-old jack, and one 16-year-old
14 jack were killed. *Id.* The jenny was killed because of a “pre-existing large hematoma on [her]
15 stomach” and the two jacks were killed because of “pre-existing fractures” to one leg each. *Id.*

17 Laurie Ford, a representative of Plaintiff Wild Horse Education, observed the first and
18 second days of the gather at Blue Wing Complex on August 1st and 2nd. *See* Exhibit 2. The
19 BLM brought Ms. Ford to a location approximately 1.3 miles from the trap site for public
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21
22 ¹ See Bureau of Land Management, *Bureau of Land Management to Begin the FY2022 Blue*
23 *Wing Complex Wild Horse and Burro Gather* (July 26, 2022), <https://www.blm.gov/press-release/bureau-land-management-begin-fy2022-blue-wing-complex-wild-horse-and-burro-gather-0>.

24 ² See Bureau of Land Management, *2022 Blue Wing Complex Wild Horse and Burro Gather*
25 (Aug. 2, 2022), <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-humboldt-fo/2022-blue> (the BLM website initially misreported the August
26 1st operation as gathering 174 wild *horses* instead of burros—the correction was made after approximately 24 hours).

1 observation. *Id.* There were also BLM trucks and stock trailers obstructing Ms. Ford's view of
2 the trap. *Id.* Due to the distance and the obstruction from the trucks, even the equipment that Ms.
3 Ford brought—cameras and lenses built for extreme distance image capture—could not help her
4 capture and view any features or conditions of the animals being pursued by helicopters into the
5 trap site. *Id.* The trap pens where the animals are kept after entering the trap sites were also
6 predominantly obstructed while BLM personnel were loading the animals onto trailers. *Id.* This
7 prevented Ms. Ford from observing and documenting the BLM's handling of the animals as they
8 were loaded onto trucks to be brought to the temporary holding corrals. *Id.*

9
10 Ms. Ford could vaguely see from a distance that some of the burros were quite small and
11 therefore young. *Id.* From the far distance, she was not able to see any features that would allow
12 her to identify individual burros or tell them apart. *Id.* She believes that at least 8 burros have
13 been roped by BLM personnel this far. *Id.* Of particular concern, Ms. Ford saw one burro being
14 roped by BLM, after being pursued by helicopter for an unknown distance, for over an hour. *Id.*
15 At one point, she believes she saw the burro fall to his side and flip over from the struggle. *Id.*
16 Ms. Ford would like to check on this burro's health condition after the incident, but BLM has not
17 allowed her to view the burro in any way that would allow her to assess his condition or even
18 identify which particular burro it is so that she can track him through BLM's adoption process.
19 *Id.*

20 Ms. Ford was prohibited by BLM from observing the handling of animals or their
21 conditions at the temporary holding corrals on the first two days of the operation. *Id.* She was
22 told by BLM personnel that the public will not be allowed access to the temporary holding
23 corrals at all during the rest of the gather operation. *Id.*

24 **2. First Amendment**

25 In the Ninth Circuit, wild horse gathers conducted by the BLM qualify for the right of
26

1 access established in *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 8-
 2 9, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986). *See Leigh v. Salazar*, 677 F.3d 892, 897-900 (9th Cir.
 3 2012). Thus, the government must demonstrate “an overriding interest based on findings that
 4 closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.*
 5 (quoting *Press-Enterprise II*, 478 U.S. at 9). The government cannot meet this burden.

6 Plaintiffs’ members and observers made arrangements and traveled to the Blue Wing
 7 Complex to observe, photograph, film, and otherwise document the conditions of the gather and
 8 the individual horses and burros gathered. The BLM, however, is refusing access to trap sites and
 9 holding corrals to Plaintiffs. Plaintiff Wild Horse Education’s representative Laurie Ford
 10 describes how the BLM is obstructing her access and views of these important government
 11 actions and holding facilities, which are often the site of violations of humane handling
 12 requirements, in the accompanying Declaration of Laurie Ford. Ms. Ford, and all Plaintiffs and
 13 members of the public, have a First Amendment right to access and observe the BLM’s
 14 activities. This court must intervene to protect Plaintiffs’ rights by ordering the BLM to provide
 15 meaningful access to document the conditions of this gather.
 16

17 **C. Standard of Review**

18 The standard a moving party must meet to obtain injunctive relief in the form of a
 19 temporary restraining order (TRO) or a preliminary injunction is the same: “A plaintiff seeking a
 20 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
 21 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
 22 favor, and that an injunction is in the public interest.” *Winter v. Natl Res. Def. Council, Inc.*, 555
 23 U.S. 7, 20, 129 S. Ct. 365, 374 (2008); *see Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d
 24 1281, 1289 (9th Cir. 2013); *see also, e.g., Quiroga v. Chen*, 735 F.Supp.2d 1226, 1228 (D. Nev.
 25 2010).
 26

1. Irreparable Injury

“[P]laintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.” *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

The public has a qualified right to view wild horse and burro gathers under the First Amendment. *See Leigh v. Salazar*, 954 F. Supp. 2d 1090, 1100-01 (D. Nev. 2013). Courts have long held that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U. S. 347, 373 (1976). The Ninth Circuit has gone further to find that even if the First Amendment right to observe government activities is *partially* denied, the denial still constitutes irreparable harm. *See Associated Press v. Otter*, 682 F.3d 821, 825-26 (9th Cir. 2012). In *AP v. Otter*, the Ninth Circuit found that plaintiffs would suffer irreparable injury if they were denied access to witness an entire execution even though they would still be allowed to witness part of the execution and there would be other executions in the future. *Id.* Like the public’s right to witness entire executions, the public and Plaintiffs have a right to witness wild horse gathers and any denial of that right, whether partial or in the past, constitutes an irreparable injury.

Plaintiffs will never be able to observe, document, or hold BLM accountable for BLM’s gather and handling operations that occurred on August 1st and 2nd in the Blue Wing Complex. Plaintiffs will never again be able to view the burros that were gathered and shipped off of their home of the Blue Wing Complex. Plaintiffs have already suffered great irreparable injury, and continue to suffer every day that BLM continues to gather and ship wild horses and burros while denying the public their First Amendment right to view.

2. Balance of Equities

The balance of equities in this case is strongly in favor of the entry of a temporary

1 injunction because Plaintiffs’ interest, and the public’s interest, in protecting their First
2 Amendment right to observe government activities greatly outweighs any slight inconvenience
3 or accountability that BLM may face by granting public access to view the gather.

4 Plaintiffs have already completely lost their right to ever view the gathering and handling
5 of 304 animals from the Blue Wing Complex and permanently lost their ability to ever see the
6 108 shipped animals again—animals that they have grown to recognize and love over the
7 years—before they are shipped out to private holding facilities.

8 Without injunctive relief, Plaintiffs’ First Amendment rights will continue to be
9 permanently and irrevocably stripped from them. With the requested injunctive relief, the BLM
10 does not even need to delay any gather operations so long as they immediately comply with their
11 duty to grant Plaintiffs unobstructed access to the gather and holding operations on public lands.
12 Therefore, the balance of hardships undoubtably tips in favor of Plaintiffs.

13 **3. Public Interest**

14 “It is always in the public interest to prevent the violation of a party's constitutional
15 rights.” *Cal. Chamber of Commerce v. Council for Educ. and Research on Toxics*, 29 F.4th 468,
16 482 (9th Cir. 2022) (internal quotations and citations omitted). Further, the Ninth Circuit has
17 “consistently recognized the significant public interest in upholding First Amendment
18 principles.” *Id.*

19 The public has a qualified right to view wild horse and burro gathers under the First
20 Amendment. *See Leigh v. Salazar*, 954 F. Supp. 2d at 1100-01. There is therefore significant
21 public interest in ensuring that the public is afforded and not stripped of that right.

22 **4. Success on the Merits**

23 Under this factor, plaintiffs must show a “fair chance of success on the merits” of her
24 claim. *Sports Form, Inc. v. United Press International, Inc.*, 686 F.2d 750, 754 (9th Cir. 1982)
25
26

1 (internal citation omitted).

2 There is a well-established “qualified right of access for the press and public to observe
3 government activities.” *Leigh v. Salazar*, 677 F.3d at 898 (9th Cir. 2012). The Ninth Circuit has
4 applied the two-step test articulated in *Press-Enterprise Company v. Superior Court* (“*Press-*
5 *Enterprise II*”), 478 U.S. 1, 8-9 (1986), to right of access claims involving wild horse gathers.
6 *See id.* at 898-900. “First, the court must determine whether a right of access attaches to the
7 government proceeding or activity by considering 1) ‘whether the place and process have
8 historically been open to the press and general public’ and 2) ‘whether public access plays a
9 significant positive role in the functioning of the particular process in question.’” *Id.* at 898
10 (quoting *Press-Enterprise II*, 478 U.S. at 8- 9). “Second, if the court determines that a qualified
11 right applies, the government may overcome that right only by demonstrating ‘an overriding
12 interest based on findings that closure is essential to preserve higher values and is narrowly
13 tailored to serve that interest.’” *Id.* (quoting *Press-Enterprise II*, 478 U.S. at 9).

14 This Court has found that a qualified right exists to view wild horse gathers. *See Leigh v.*
15 *Salazar*, 954 F. Supp. 2d at 1100-01. Defendants’ *complete and indefinite denial* of access to the
16 temporary holding corrals and forcing the public to stand over one mile from the obstructed trap
17 site and loading areas cannot be seriously argued as “narrowly tailored” to preserve any potential
18 overriding interests. As noted, there are several BLM truck and trailers driving near the trap site
19 all day, and it follows to reason that a few members of the public could also drive or be taken to
20 those locations to document the trap sites and corrals. *See Exhibits 1 and 2.*

21 Even if, as BLM purports, the gather operations or temporary holding corrals are located
22 on private property, the public is still being denied a right that they usually are afforded and that
23 plays a crucial role in the functioning of government activities. The BLM has historically
24 contracted with private parties to ensure that the public and Plaintiffs are able to, at a minimum,
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1 attend daily tours of the temporary holding corrals where the wild horses and burros who were
2 gathered are kept. *See* Exhibit 1, Declaration of Laura Leigh. This is vital for Plaintiffs who
3 assess the conditions and identities of the animals. *Id.*

4 It is important to emphasize that “[o]pen government has been a hallmark of our
5 democracy since our nation's founding” and “[w]hen wrongdoing is underway, officials have
6 great incentive to blindfold the watchful eyes of the Fourth Estate.” *See Leigh v. Salazar*, 677
7 F.3d.

8 Under this factor, Plaintiffs respectfully submit that they have demonstrated a “fair chance of
9 success on the merits” of their claim. *See Sports Form, Inc.*, 686 F.2d at 754.

10 **D. Conclusion**

11 Plaintiffs respectfully request that this court grant plaintiffs’ motion for temporary
12 restraining order enjoining defendants from further gathering activities in the Blue Wing
13 Complex until such time as the court can rule on this simultaneous motion for preliminary
14 injunction, which requests that the BLM be further enjoined from the same until the court rules
15 on the declaratory relief requested, or such other time as the court would deem reasonable.
16 Plaintiffs further request that the court order defendants to give at least one member of each
17 Plaintiff organization unobstructed access to the BLM’s corrals and holding facilities so they
18 may observe and document the BLM’s activities and the animals gathered thus far to ensure
19 compliance with applicable federal law.
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26

1
2 DATED: August 3, 2022

Respectfully Submitted,

3 /s/ Danielle M. Holt

4 Danielle M. Holt

(Nevada Bar No. 13152)

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